

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. RPU-01-6
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**ORDER GRANTING INTERVENTION AND
DENYING REQUEST TO EXPAND SCOPE OF PROCEEDING**

(Issued September 19, 2001)

INTRODUCTION

On June 22, 2001, Qwest Corporation (Qwest) filed proposed prices for certain wholesale services and unbundled network elements (UNEs). In the cover letter accompanying the filing, Qwest states the filing is intended to establish prices for new UNEs that Qwest intends to offer through its Statement of Generally Available Terms and Conditions (SGAT). Qwest states that the proposed rates are for UNEs that were not included in the prior Qwest wholesale cost proceeding, Docket No. RPU-96-9.

The Utilities Board (Board) docketed the filing on July 20, 2001, and established a procedural schedule.

PETITION TO INTERVENE

On August 16, 2001, AT&T Communications of the Midwest, Inc. (AT&T), filed a petition to intervene in this docket. AT&T alleges it has a substantial and direct interest in the subject matter of this proceeding.

No objection or other response has been filed with respect to the petition to intervene. In the absence of any objection, the Board will grant the petition to intervene.

MOTION TO EXPAND SCOPE

On August 28, 2001, McLeodUSA Telecommunications Services, Inc. (McLeod), filed a motion to expand the scope of this proceeding. McLeod states that a review of cost models and studies used to support Qwest's proposal shows that Qwest has limited its filing to prices for new UNEs and has excluded consideration of prices for unbundled loops and switching rates. McLeod asks that the Board expand the scope of this docket to consider all of Qwest's UNE prices.

In support of its request, McLeod notes that in a prior proceeding, Docket No. RPU-00-1, McLeod's witness testified that Qwest's UNE loop and switching prices in Iowa are too high and should be revisited. McLeod also notes that in the same docket the Board issued a notice that it intended to consider those issues (and others) in Docket No. RPU-00-1, but subsequently declined to expand that proceeding due to limited time for deaveraging Qwest's UNE loop price and a ruling by the Eighth Circuit Court of Appeals, vacating the federal UNE pricing rules. McLeod suggests it would be appropriate to expand this proceeding to include consideration of all of Qwest's UNE pricing, as the Board is not under any federal deadline (as it was in Docket No. RPU-00-1). McLeod asks that the Board direct Qwest to re-file its TELRIC cost studies for all UNEs, including loops and switching

elements, and then give the responding parties 60 days from the date of Qwest's filing to file responsive testimony.

On August 29, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to McLeod's motion. Consumer Advocate agrees that the Board should expand the scope of this proceeding to reconsider the costing methodology and UNE prices previously established for Qwest. Consumer Advocate states that its witness in Docket No. RPU-00-1 also testified that Qwest's existing UNE loop rate is substantially above its actual loop costs and that the methodology used to set the existing rate deviated from TELRIC principles. Consumer Advocate also argues that the Board is not faced with a federal deadline for completion of this proceeding, as it was in Docket No. RPU-00-1, and the Board therefore can and should modify the procedural schedule to allow Qwest to file, and the other parties to consider, cost evidence pertaining to all of Qwest's UNEs.

On September 6, 2001, Qwest filed its response to McLeod's request. Qwest argues that McLeod's request should be denied for one of the reasons the Board decided not to expand the scope of Docket No. RPU-00-1: In order to await the conclusion of the pending appeals on the proper principles governing rate setting for unbundled network elements. Qwest notes that the Eighth Circuit Court of Appeals decision vacating portions of the FCC's TELRIC pricing methodology is now pending before the United States Supreme Court, see AT&T Corp. v. Iowa Utilities Board, United States Supreme Court Case No. 00-590. Qwest submits there is no value in

committing resources to a review of the UNE prices set in Docket No. RPU-96-9 when the Supreme Court may find that the methodology used by the Board in that docket is permissible.

On September 11, 2001, McLeod filed a reply to Qwest's response, arguing that in the interest of judicial economy the Board should consider all of Qwest's UNE rates at the same time and that it is unfair to allow Qwest to submit studies on an individual UNE basis while relying upon a five-year-old proceeding to support the rates for the most important UNEs. McLeod also argues that the Board should consider the effect of its decision on competition, pursuant to Iowa Code § 476.95(2). McLeod notes that Iowa's current UNE loop rates are higher than loop rates in Illinois and Michigan and argues this situation indicates a need to re-examine (and, in McLeod's opinion, reduce) Qwest's UNE loop rate in order to advance competition in Iowa.

McLeod responds to Qwest's argument regarding most efficient use of resources by arguing that it would be inefficient to determine new UNE prices based upon TELRIC principles when pricing for the most important UNEs has not been reviewed for TELRIC compliance. Finally, McLeod argues that TELRIC-based filings have been submitted or are being considered in at least four other Qwest states, indicating it is possible to consider a full TELRIC case at this time.

Consumer Advocate also filed a reply to Qwest's response on September 11, 2001. Consumer Advocate asserts that the Board's decision not to expand the scope of Docket No. RPU-00-1 was, in part, based upon the deadline mandated by

the FCC for completion of that docket, a factor that is not present in this proceeding. Consumer Advocate notes that the Board's order in that docket specifically stated that UNE rates could be revisited at such time as there is reason to believe Qwest's UNE rates should be changed. Both McLeod and Consumer Advocate assert that at least some of Qwest's UNEs are too high and the Board should take this opportunity to address all of Qwest's UNE prices.

The Board will deny the request to expand the scope of the proceeding. The Board considered expanding the scope of Docket No. RPU-00-1 on its own motion and decided not to, primarily because of the uncertainty regarding the legal status of the FCC's TELRIC pricing rules. In re: U S WEST Communications, Inc., Docket No. RPU-00-1, "Order Sustaining Objections To Consideration Of Certain Remand Issues," pp. 8-10 (issued August 2, 2000). There has not been any significant change since that time; the FCC's rules are still the subject of judicial review, and what the Board said in 2000 is still true: If the Board were to expand this proceeding to consider all of Qwest's UNEs,

it is unclear what standards the Board would be required to apply to any new cost studies. The remand from the federal district court requires that the Board use the FCC's TELRIC methodology, but the recent Eighth Circuit decision vacates and remands the FCC's TELRIC rules. It appears it would be an inefficient use of the resources of the Board and the parties to conduct a full-scale UNE and wholesale cost review at this time, when the standards applicable to that review are uncertain.

Id. at page 8.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The petition to intervene filed by AT&T Communications Company of the Midwest, Inc., on August 16, 2001, is granted.
2. The motion to expand the scope of the proceeding filed by McLeodUSA Telecommunications Services, Inc., on August 17, 2001, is denied.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 19th day of September, 2001.